

12/3/09

COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



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ORIGINAL

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

FROM: Matthew J. Neubert 
Director of Securities

DATE: November 17, 2009

RE: Mark W. Bosworth, *et al.* (Docket No. S-20600A-08-0340); Order to Cease and Desist, for Restitution, and for Administrative Penalties and Consent to Same by: Robert Bornholdt

CC: Ernest G. Johnson, Executive Director

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AZ CORP COMMISSION
DOCKET CONTROL

Attached is a proposed Order to Cease and Desist, for Restitution, and for Administrative Penalties and Consent to Same by: Robert Bornholdt (the "Order"). The Order finds that, from February to May 2006, Mr. Bornholdt offered and sold to five investors \$767,500 of investment contracts and promissory notes (collectively the "Investments") issued by Mark Bosworth & Associates, L.L.C. in connection with commercial buildings under construction. Mr. Bornholdt was not registered as a securities dealer or salesman and the Investments were not registered pursuant to the Securities Act.

The Order finds that Mr. Bornholdt violated A.R.S. §§ 44-1841 and 44-1842 by offering and selling unregistered securities while being unregistered. The Order requires Mr. Bornholdt to cease and desist his activity, pay \$767,500 in restitution, and pay an administrative penalty in the amount of \$50,000.

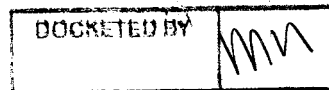
The Division believes that the Order is appropriate to protect the public welfare.

Originator: Aaron S. Ludwig

Arizona Corporation Commission

DOCKETED

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 KRISTIN K. MAYES, Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
 BOB STUMP

7 In the matter of)

8 MARK W. BOSWORTH and LISA A.)
 BOSWORTH, husband and wife;)

9 STEPHEN G. VAN CAMPEN and DIANE)
10 V. VAN CAMPEN, husband and wife;)

11 MICHAEL J. SARGENT and PEGGY L.)
 SARGENT, husband and wife;)

12 ROBERT BORNHOLDT and JANE DOE)
13 BORNHOLDT, husband and wife;)

14 MARK BOSWORTH & ASSOCIATES,)
15 L.L.C., an Arizona limited liability)
 company;)

16 3 GRINGOS MEXICAN INVESTMENTS,)
17 L.L.C., an Arizona limited liability)
 company;)

18 Respondents.)

DOCKET NO. S-20600A-08-0340

DECISION NO. _____

**ORDER TO CEASE AND DESIST, FOR
RESTITUTION, AND FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:**

ROBERT BORNHOLDT

19 Respondent ROBERT BORNHOLDT ("BORNHOLDT") elects to permanently waive any
20 right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S.
21 § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, for
22 Restitution, and for Administrative Penalties ("Order"). BORNHOLDT admits the jurisdiction of
23 the Arizona Corporation Commission ("Commission"); admits only for purposes of this
24 proceeding and any other administrative proceeding before the Commission the Findings of Fact
25 and Conclusions of Law contained in this Order; and consents to the entry of this Order by the
26 Commission.

I.

FINDINGS OF FACT

1. MARK BOSWORTH & ASSOCIATES, L.L.C. ("MBA") is an Arizona limited liability company doing business in Maricopa County, Arizona. MBA is the holder of a real estate license issued by the Arizona Department of Real Estate.

2. BORNHOLDT is, and was at all relevant times, a single man last known to reside in Maricopa County, Arizona. BORNHOLDT is the holder of a real estate license issued by the Arizona Department of Real Estate and, at all relevant times, he was an employee and Designated Broker of MBA where he worked under the direction of Mark W. Bosworth.

3. At all relevant times, BORNHOLDT was not registered with the Commission as a securities dealer or salesman.

4. From February to May 2006 in Maricopa County, Arizona, BORNHOLDT offered and sold to five investors \$767,500 of investment contracts and promissory notes issued by MBA with titles such as "Investment Agreement," "Promissory Note," and "Receipt of Investment Funds" (collectively the "Investments").

5. At all relevant times, the Investments were not registered pursuant to Articles 6 or 7 of the Securities Act.

6. BORNHOLDT represented the Investments to offerees and investors as follows: investor money would be pooled and used by MBA to purchase commercial buildings under construction, then the buildings would be leased by MBA to future tenants until sold by MBA when completed for substantial gains.

7. It was represented that the Investments would return to investors 100 percent of their initial investment plus a 30 to 100 percent return, but financial information regarding MBA and the Investments, including the assets and liabilities of MBA and the additional, lender financing needed by MBA to purchase the buildings, was not disclosed.

8. MBA did not purchase (and later sell) the buildings and the investors received neither the 30 to 100 percent return nor their initial investment, despite having requested same.

9. It was represented that the Investments were safe and not risky, but risks associated with the Investments, including that the Investments were not secured by real estate and the illiquid nature of real estate investments, were not disclosed.

10. Even though it was represented to investors that their money would be used solely for a specific Investment, investor money was transferred from MBA to other entities and individuals for other purposes.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. While he was an employee of MBA working under the direction of Mark W. Bosworth, BORNHOLDT offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. BORNHOLDT violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. BORNHOLDT violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. The conduct of BORNHOLDT is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

6. The conduct of BORNHOLDT is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

7. The conduct of BORNHOLDT is grounds for administrative penalties under A.R.S. § 44-2036.

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III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the consent of BORNHOLDT to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that BORNHOLDT and any of the agents, employees, successors and assigns of BORNHOLDT permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that BORNHOLDT complies with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that BORNHOLDT shall, jointly and severally with any other Respondent against whom the Commission enters an order under Docket No. S-20600A-08-0340, pay restitution to the Commission in the amount of \$767,500. Any principal amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of purchase until paid in full. Interest in the amount of \$282,630 has accrued from the date of purchase to the date of this Order. Payment shall be made in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the

Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that BORNHOLDT shall pay an administrative penalty in the amount of \$50,000. Payment shall be made to the "State of Arizona." If the restitution obligation specified above is paid in full, the administrative penalty will be reduced to \$25,000. Any amount outstanding shall accrue interest at the rate of 10 percent per annum from the date of this Order until paid in full. The payment obligations for these administrative penalties shall be subordinate to any restitution obligations ordered herein and shall become immediately due and payable only after restitution payments have been paid in full or upon the default of BORNHOLDT with respect to the restitution obligations of BORNHOLDT.

For purposes of this Order, a bankruptcy filing by BORNHOLDT shall be an act of default. If BORNHOLDT does not comply with this Order, any outstanding balance may be deemed in default and shall be immediately due and payable.

IT IS FURTHER ORDERED that, if BORNHOLDT fails to comply with this order, the Commission may bring further legal proceedings against BORNHOLDT, including application to the superior court for an order of contempt.

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1 IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this
2 Order shall be deemed binding against any Respondent under this Docket Number who has not
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
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7

8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this _____ day of
_____, 2009.

17 _____
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 _____
21 DISSENT

22 _____
23 DISSENT

24 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
25 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

26 (ASL)

CONSENT TO ENTRY OF ORDER

1
2 1. BORNHOLDT admits the jurisdiction of the Commission over the subject matter of
3 this proceeding. BORNHOLDT acknowledges that he has been fully advised of his right to a
4 hearing to present evidence and call witnesses and he knowingly and voluntarily waives any and
5 all rights to a hearing before the Commission and all other rights otherwise available under Article
6 11 of the Securities Act and Title 14 of the Arizona Administrative Code. BORNHOLDT
7 acknowledges that this Order To Cease And Desist, for Restitution, and for Administrative
8 Penalties ("Order") constitutes a valid final order of the Commission.

9 2. BORNHOLDT knowingly and voluntarily waives any right under Article 12 of the
10 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
11 resulting from the entry of this Order.

12 3. BORNHOLDT acknowledges and agrees that this Order is entered into freely and
13 voluntarily and that no promise was made or coercion used to induce such entry.

14 4. BORNHOLDT acknowledges that he has been represented by an attorney in this
15 matter, has reviewed this Order with his attorney Julie Beauregard, and understands all of the
16 terms it contains.

17 5. BORNHOLDT admits only for purposes of this proceeding and any other
18 administrative proceeding before the Commission the Findings of Fact and Conclusions of Law
19 contained in this Order. BORNHOLDT agrees that he shall not contest the validity of the Findings
20 of Fact and Conclusions of Law contained in this Order in any present or future administrative
21 proceeding before the Commission.

22 6. By consenting to the entry of this Order, BORNHOLDT agrees not to take any
23 action or to make, or permit to be made, any public statement denying, directly or indirectly, any
24 Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is
25 without factual basis. BORNHOLDT will undertake steps necessary to assure that all of his agents
26 and employees understand and comply with this agreement. Nothing in this paragraph shall

1 preclude BORNHOLDT from defending himself in any future administrative, civil, or criminal
2 proceedings.

3 7. While this Order settles this administrative matter between BORNHOLDT and the
4 Commission, BORNHOLDT understands that this Order does not preclude the Commission from
5 instituting other administrative or civil proceedings based on violations that are not addressed by
6 this Order.

7 8. BORNHOLDT understands that this Order does not preclude the Commission from
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
9 that may be related to the matters addressed by this Order.

10 9. BORNHOLDT understands that this Order does not preclude any other agency or
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
12 proceedings that may be related to matters addressed by this Order.

13 10. BORNHOLDT agrees that he will not apply to the state of Arizona for registration
14 as a securities dealer or salesman or for licensure as an investment adviser or investment adviser
15 representative at any time in the future.

16 11. BORNHOLDT agrees that he will not exercise any control over any entity that
17 offers or sells securities or provides investment advisory services within or from Arizona at any
18 time in the future.

19 12. BORNHOLDT agrees that he will not sell any securities in or from Arizona without
20 being properly registered in Arizona as a dealer or salesman, or exempt from such registration;
21 BORNHOLDT will not sell any securities in or from Arizona unless the securities are registered in
22 Arizona or exempt from registration; and, BORNHOLDT will not transact business in Arizona as
23 an investment adviser or an investment adviser representative unless properly licensed in Arizona
24 or exempt from licensure.

25 13. BORNHOLDT agrees that he will continue to cooperate with the Securities
26 Division including, but not limited to, providing complete and accurate testimony at any hearing in

this matter and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

14. BORNHOLDT consents to the entry of this Order and agrees to be fully bound by its terms and conditions.

15. BORNHOLDT acknowledges and understands that if he fails to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against him, including application to the superior court for an order of contempt.

16. BORNHOLDT understands that default shall render him liable to the Commission for its costs of collection and interest at the maximum legal rate.

17. BORNHOLDT agrees and understands that if he fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. BORNHOLDT agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by Commission.


ROBERT BORNHOLDT

STATE OF ARIZONA)
) ss
County of Maricopa)



SUBSCRIBED AND SWORN TO BEFORE me this 10th day of November, 2009.


NOTARY PUBLIC

My commission expires:

1/14/2011

1 SERVICE LIST FOR: In the Matter of Mark W. Bosworth, et al.

2
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4 c/o Julie M. Beauregard, Esq.
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